

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT AND MARQUEZ CHARTER
SCHOOL.

OAH CASE NO. 2014070341

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On September 29, 2014, a telephonic prehearing conference was held before Administrative Law Judge Clifford H. Woosley, Office of Administrative Hearings. Arlene Bell, Attorney at Law, appeared on behalf of Student (Student). Diana Massaria, Director of Litigation and Research, appeared on behalf of Los Angeles Unified School District (District). The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing shall take place on October 7, 8, and 9, 2014, and continuing day to day, Monday through Thursday as needed, at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered. The hearing shall take place at the Office of Administrative Hearings, 15350 Sherman Way, Suite 300, Van Nuys, CA 91406.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing “good cause” to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issues. The issue at the due process hearing is:

Did the District deny Student a free appropriate public education by failing to offer a full-time Health Care Aide, from a private or nonpublic agency, throughout the school day and on the bus for the 2014-2015 school year?

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits, but shall place the letter “S” or “D” in front of the exhibit to designate if it is a Student or District exhibit (for

example, “S-5, S-6, or D-1, D-2”). Each exhibit shall be internally paginated by exhibit, or all of a party’s exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the Administrative Law Judge, and a second exhibit binder for use by witnesses. The parties have agreed that they may serve their evidence binders on each other by October 2, 2014, and be in compliance with Education Code section 56505, subdivision (e)(7). (See Paragraph 7, below.) The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

If a party intends to rely upon a witness’s education and professional experience in presenting testimony, the party must include the curriculum vitae of each such witness as part of the party’s exhibits.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously timely exchanged shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and the Administrative Law Judge rules that it is admissible.

4. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Neither party shall be permitted to call any witnesses not disclosed in the party’s prehearing conference statement except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the Administrative Law Judge.

The parties are ordered to meet and confer by October 3, 2014, for purposes of preparing a schedule of witnesses to be presented to the Administrative Law Judge on the first day of hearing. The parties are encouraged to review and shorten their witness lists prior to the hearing, bearing in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear. The parties shall be prepared at the end of each day of hearing to discuss the witnesses to be presented the next day and the time the testimony of each such witness is expected to take. The Administrative Law Judge has discretion to limit the number of witnesses who testify and the time allowed for witnesses’ testimony.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination. If a witness is to be called by more than one party, the parties need be prepared to examine the witness when first called. Except on a motion and good cause shown, a witness will appear and testify once.

6. Telephonic Testimony. Whether a witness may appear by telephone is a matter within the discretion of the ALJ. Cal. Code Regs., tit. 5, § 3082, subd. (g). Any party seeking to present a witness by telephone shall move in advance for leave to do so, unless the

opposing party has stipulated that the witness may appear by telephone. The proponent of the witness shall provide the proposed witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing; and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings. No witness will be heard by telephone unless all these requirements have been fulfilled.

Student's motion to allow [REDACTED] to testify telephonically is granted. Student shall provide [REDACTED] with the complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing.

Student's motion to allow [REDACTED] to testify telephonically is denied, without prejudice. On the first day of hearing, Student may again request that [REDACTED] be permitted to telephonically testify, providing additional information that would support the request.

7. Timely Disclosure of Witnesses/Exhibits. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing. The parties have stipulated, on the record, that the disclosure of witnesses and exchange of exhibits, by October 2, 2014, will be deemed in compliance with Education Code section 56505, subdivision (e)(7).

8. Order of Presentation of Evidence. Student is the petitioner, bears the burden of proof, and will first present evidence as to his issues, to be followed by District's presentation of evidence.

9. Motions. Other than the motions associated with telephonic testimony (see Paragraph 6, above), no pretrial motions are pending or contemplated. Any motion filed after this date, including motions for any further continuances, shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference of September 29, 2014.

10. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

11. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the Administrative Law Judge.

12. Compensatory Education/Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. A party seeking compensatory

education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

13. Special Needs and Accommodations. At present, neither party anticipates the need for special accommodation for any witness or party, or for translation services.

14. Hearing Closed To the Public. The hearing is closed to the public.

15. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform the Office of Administrative Hearings in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform the Office of Administrative Hearings of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the request for withdrawal/dismissal and signature page of the signed agreement has been received by the Office of Administrative Hearings. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned Administrative Law Judge.

16. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: September 29, 2014

/s/
CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings